



INTERIOR BOARD OF INDIAN APPEALS

Estate of Donna Gottschalk

39 IBIA 162 (10/16/2003)

Related Board case:
30 IBIA 82



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF DONNA GOTTSCHALK : Order Docketing Appeal, Affirming
: Decision in Part and Dismissing
: Appeal in Part, and Authorizing
: Partial Distribution of Estate
:
: Docket No. IBIA 03-83
:
: October 16, 2003

Appellant George Frederick Gottschalk, Jr., sought review of a February 26, 2003, decision on rehearing entered in the estate of his mother, Decedent Donna Gottschalk, by Administrative Law Judge Harvey C. Sweitzer. IP SA 126N 94. For the reasons below, the Board of Indian Appeals (Board) docketed this appeal, affirms the Judge's decision in part, dismisses this appeal, and authorizes the partial distribution of Decedent's estate.

The only objection to the probate of Decedent's estate that Appellant has articulated is that the inventory of her trust assets included 30 acres of land conveyed to her by the State of Alaska in 1976. Appellant contends that these 30 acres are part of a 40-acre application for an Alaska Native Allotment that he submitted to the Bureau of Land Management (BLM) in 1970. Apparently, no final decision has been made in regard to Appellant's application.

On May 6, 2003, the Board ordered Appellant to show why it should not dismiss this appeal and authorize the Bureau of Indian Affairs (BIA) to distribute all of Decedent's estate except for the 30 acres at issue here. The Board explained that it does not have jurisdiction over Appellant's application for an Alaska Native Allotment, and that BLM will decide whether or not to approve that application. The Board advised Appellant that the Interior Board of Land Appeals, not this Board, has jurisdiction over appeals from BLM Alaska Native Allotment decisions.

Although Appellant filed several documents with the Board, none of those documents addressed the issues set out in the Board's May 6, 2003, order. The Board gave Appellant several extensions of time to respond. It received Appellant's most recent filing, entitled "Actual Notice and Demand for Cessation of Trespass," on September 29, 2003. The Board treats this filing as Appellant's response to its May 6, 2003, order.

Appellant asserts that the Yup'ik people have no treaty with the United States and are not citizens of the United States and that, Nunavut, the Yup'ik homeland in Western Alaska, is not geographically, territorially, or politically part of the United States. Appellant argues that “[t]he land described in the application abovementioned, belongs to [Appellant] by way of inheritance; the Alaska Native Allotment Act (and other U.S. legislation), notwithstanding.” Sept. 26, 2003, Actual Notice at 2. Based on these assertions, Appellant states that the Board “has no lawful authority to make any legal determination regarding [Appellant] or [his] lands.” Id. at 3. Appellant continues:

Therefore, [I] give[] Actual Notice to, and Demand[] that the United States cease in its (combined) trespass(es) upon my lands, and imprescriptable rights, and vacate, make complete and timely remuneration to [me], all other persons injured (damaged) by the United States Government's fraud, or show better land title, i.e., authentic title to Nunavut, A.K.A., Western Alaska, within 30 days of receipt of this instrument.

Id.

The Board is not a court of general jurisdiction. Rather, it has only that authority delegated to it by the Secretary of the Interior. It does not have authority to determine aboriginal title. Tsosie v. Navajo Area Director, 20 IBIA 108 (1991); Noyo River Indian Community v. Acting Sacramento Area Director, 19 IBIA 63, 66-67 (1990). Therefore, if Appellant wishes to pursue his aboriginal claim to this land, he must bring that claim in a forum with jurisdiction to hear it.

The issue that is properly before the Board, and over which it has jurisdiction, relates to the probate of Decedent's estate. The Board finds that Appellant has not shown why Decedent's estate, except for the 30 acres of land which he claims, should not be distributed in accordance with the probate orders previously entered. As the Board noted in its earlier orders in this appeal, it has no jurisdiction in regard to Appellant's Alaska Native Allotment application. The processing of Appellant's application is before BLM, and is totally separate from this probate proceeding. However, by retaining the disputed 30 acres in Decedent's estate pending the completion of BLM's consideration of Appellant's application, the land will be available if BLM decides in favor of Appellant. Furthermore, distributing the remainder of Decedent's estate will not prejudice Appellant, but will allow others to receive their shares of the estate without having to wait for the completion of BLM's consideration of Appellant's application.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed; that part of Judge Sweitzer's February 26, 2003, decision on rehearing dealing with everything other than the 30 acres that Appellant claims is affirmed; this appeal is dismissed for failure to show cause; and BIA is authorized to distribute all of Decedent's estate except for the 30 acres which Appellant claims.

Because this decision leaves Decedent's estate open, BIA may find it advisable to contact BLM directly to determine the status of Appellant's Alaska Native Allotment application. When that application process is completed, BLM is requested to provide BIA with information as to whether or not Appellant's application was approved so that BIA can take the necessary action to close Decedent's estate. BIA should take action to close Decedent's estate as soon as there is a final decision in regard to Appellant's Alaska Native Allotment application.

//original signed

Kathleen R. Supernaw
Acting Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge